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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,429	04/20/2006	Yasuhito Murata	10921.401USWO	2418

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EXAMINER
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ALEXANDER, LYLE

ART UNIT	PAPER NUMBER
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1797

MAIL DATE	DELIVERY MODE
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06/12/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/576,429	<b>Applicant(s)</b> MURATA, YASUHIRO	
	<b>Examiner</b> Lyle A. Alexander	<b>Art Unit</b> 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                                                  |                                                                                         |
|----------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                      | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                             | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/20/06</u> . | 6) <input type="checkbox"/> Other: ____.                                                |

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors. The claims are replete with errors. Below is an analysis of claim 1. The remaining claims have similar issues that are too numerous to document here.

Claims 1 is vague and indefinite what structure is intended by a "test piece." This language is sufficiently broad to be read on just about any element. For the purposes of examination "test piece" will be interpreted as an analytical testing element.

Claim 1 is further unclear if the device removes all of the test pieces or only the warped test pieces. The first two paragraphs of the claim remove all of the test pieces. However, the last paragraph of the claim removes only the warped test pieces. If the purpose of the device is to only remove warped test strips, then the first two paragraphs should specify that warped test pieces are being removed. It is also unclear what are the structural characteristics of a "warped test piece" that are distinguishable from a non-warped test piece. Clarification could be achieved by describing the structure of

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the test pieces and describing what portion is warped (e.g. the test piece comprises a support and a bibulous portion containing a reagent ... and the support portion is warped or deformed such that the support is not in the same plane ... ).

Claim 1 is also unclear what structure is intended by the “interfering means.” As presently written, almost anything could meet the structural requirement of “interferes with test pieces above the test piece.” Presumably, Applicant intends a means to secure or hold the test piece in the recess.

In lines 11-12 of claim 1 there is no distinction between the “ ... test pieces above the test piece in the recess ...”. Clarification could be achieved by claiming loose test pieces in the container and a secured test piece.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-16 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Shindo et al. (5,556,597) or Maissey et al. (2002/0057993).

In light of the 35 USC 112 second paragraph issues above, the invention is best understood as a device for removing test strips from a container.

Shindo et al. teach a test strip supply device that removes a single test strip from a container with a plurality of test strips. Column 2 lines 17-22 teach the container is tubular with a guide is arranged on the inner wall in the elongated direction to secure a

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single test strip and a block member that maintain the test strip in the guide. The Office has read this on the claimed "container for containing a plurality of test pieces", the "recess for accommodating one of the test pieces container in the container" and the "interfering means".

Maisey et al. teach a device for dispensing test strips(16) comprising a stack of sensors(16) with a housing(2) that further comprises a rotatably mounted transport member(4) that has a recessed portion(12) that receives test strip(16) from the internal magazine(18) and dispenses the strip(16) to the user. The Office has read the claimed "container for containing a plurality of test pieces" on the taught --housing(2)--, the claimed "recess for accommodating one of the test pieces container in the container" on the taught --recesses portion(12)-- and the claimed "interfering means" has been read on the solid non-notched portion of member(4) that prevents more than one strip(16) from being dispensed per rotation.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A. Alexander whose telephone number is 571-272-1254. The examiner can normally be reached on Monday, Tuesday and Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lyle A Alexander  
Primary Examiner  
Art Unit 1797

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Primary Examiner, Art Unit 1797